



September 25, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington DC 20554

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SEP 25 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Proposed Rulemaking Concerning Deployment of Wireline Services
Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Dear Ms. Salas:

Attached are the original and four copies of the comments of NorthPoint Communications regarding the Commission's Notice of Proposed Rulemaking Concerning Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

Sincerely,

Steven Gorosh
Vice President & General Counsel

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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And U S West Communications Inc.)	
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Relief from Regulation Pursuant to Section)	
706 of the Telecommunications Act of 1996)	
and 47 U.S.C. § 160 for ADSL Infrastructure)	
and Service)	

COMMENTS OF NORTHPOINT COMMUNICATIONS INC.

Ruth Milkman
Daniel Segal
The Lawler Group
7316 Wisconsin Avenue, Suite 400
Bethesda, MD 20814
(301) 654-9737

Steven Gorosh
Vice President and General Counsel
NorthPoint Communications, Inc.
222 Sutter Street, Suite 700
San Francisco, CA 94108
(415) 403-4003

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EXECUTIVE SUMMARY

NorthPoint applauds the Commission's proposed rulemaking. The specific remedies to improve loop and collocation availability will go a long way towards ensuring widespread deployment of advanced services by competitive DSL providers like NorthPoint. The measures advanced by the Commission also respond to the ILECs' requests for regulatory relief by relieving ILEC advanced data service subsidiaries of resale and unbundling obligations, while providing competing providers with guarantees that the ILECs will not advantage their own advanced services by leveraging their control over monopoly bottleneck elements. Thus, the proposed rulemaking will promote the deployment of advanced services by enabling vigorous competition among all providers.

DSL CLECs have been expanding at an unprecedented pace; NorthPoint, for instance, has begun providing service in three cities in the last three months and plans to serve another twenty-two metropolitan areas within eighteen months. This ambitious schedule will provide both business and residential customers with broadband alternatives within the very near future. The specific loop and collocation remedies proposed by the Commission will be of great help to NorthPoint and other data CLECs in deploying broadband alternatives, and NorthPoint urges the Commission to include each and every one in its final order.

NorthPoint also agrees with this Commission's conclusion that ILECs should be relieved of their section 251(c)(4) resale and unbundling obligations only if they provide their advanced services through a true "arm's length" subsidiary. No credence is owed ILEC claims that a separate affiliate requirement will hamper widespread deployment of advanced services by eliminating efficiencies. The ILECs' dogged repetition of this claim

comes with little to no supporting evidence. In fact, the alleged “inefficiencies” cited by the ILECs appear to be no more than the excessive loop and collocation charges and delays they impose on CLECs. U S WEST, for instance, is rapidly deploying its ADSL service throughout its service territory while simultaneously excluding competitors through arbitrary restrictions on their ability to order collocation. NorthPoint suspects that exclusionary policies like these would be short-lived if U S WEST were required to treat its advanced services affiliate in the same fashion as competing providers. A separate affiliate thus provides the best framework for competition in advanced data services.

Even more specious are the ILECs’ claims that advanced services will not be deployed at all if a separate subsidiary is required. Data CLECs, for instance, are deploying advanced services at breakneck speed even though they have none of the advantages cited by the ILECs. More telling still, Ameritech already is providing advanced services through a separate subsidiary – Ameritech Advanced Data Services – demonstrating that the ILECs can and will deploy advanced services through a separate affiliate.

In fact, Ameritech and NorthPoint are in general agreement on how an advanced services affiliate should be structured. NorthPoint and Ameritech have jointly developed a document (attached to both NorthPoint's and Ameritech's comments) listing their points of agreement. That these two diverse – and historically adverse – market participants can agree on how a separate subsidiary should be structured provides compelling evidence that the separate subsidiary requirements proposed by the Commission are neither inefficient nor overly complicated. Both companies agree that the Commission's proposed separate subsidiary requirements will minimize dangers of discrimination and cross-subsidization by

the ILECs. Both companies agree that the ILECs' requests for regulatory relief are best met by providing them with the opportunity to compete on the same terms as their competitors, while allowing them to retain advantages such as tremendous name recognition, access to capital, and joint marketing flexibility. Both NorthPoint and Ameritech thus support the bulk of the Commission's separate subsidiary framework. NorthPoint and Ameritech are also in agreement about most of the Commission's proposed loop and collocation remedies.

Recent events, however, require that the Commission address another -- and even more crucial -- aspect of advanced services deployment. Since comments were filed on the ILECs' petitions for relief under section 706, several ILECs (Bell Atlantic, BellSouth, GTE and Pacific Bell) have tariffed ADSL service. Not one of these tariffs reflects a single penny of the exorbitant loop and collocation costs necessary to provide xDSL service, and which the ILECs impose on xDSL CLECs. This has created a "price squeeze" under which ILECs' charges to competing CLECs for the unbundled network elements necessary to provide competitive DSL service are more than the full retail charge of the ILECs' service.

GTE, for instance, provides its ADSL service for as little as \$29 per month. By contrast, in California, CLECs must pay GTE almost \$19 for an unbundled digital loop necessary to compete, as well as an average of almost \$50,000 for collocation in each central office. Similarly, BellSouth charges as little as \$45 per month for their ADSL service in Florida, while it charges CLECs like NorthPoint \$41.50 for the unbundled loop necessary to provide competing services. Thus, a CLEC's costs for loops and collocation exceed GTE's and BellSouth's prices for ADSL service, before the CLEC recovers costs

of equipment and overhead. Obviously, facilities-based competition cannot exist where it costs CLECs more for a piece of an ILEC's DSL service than it costs retail customers for the entire service.

In order to reduce this anticompetitive disparity and encourage the ILECs to reduce the costs of the wholesale elements necessary to provide competing services, NorthPoint urges the Commission to mandate the following four requirements:

First, this Commission should require ILECs that provide advanced services on an integrated basis to impute the same loop and collocation prices they charge CLECs. Imputation will ensure that the ILECs' ADSL prices reflect the same inputs charged competitors, ensuring the ILECs will not enjoy an arbitrary pricing advantage. As this Commission has already recognized, an imputation rule is the appropriate tool to guard against such anticompetitive cross-subsidization. (No such rule is necessary if the ILEC furnishes its ADSL service through a separate subsidiary, because by definition the advanced services affiliate is required to purchase these elements at arm's length.) NorthPoint notes, moreover, that if the ILEC does impute the costs of unnecessary unbundled network elements, it will have a powerful incentive to reduce the costs of those inputs. This will result in even more vigorous competition and promote widespread deployment of xDSL service.

Second, where an ILEC refuses to adopt a separate subsidiary arrangement, the Commission should require that it tariff that product on a wholesale basis – with an appropriate retail discount – within 30 days of the Commission's order in this proceeding (or before providing xDSL service). To date, the ILECs have studiously ignored this Commission's mandate that ILECs providing advanced services on an integrated basis are

subject to section the resale and unbundling requirements of the 1996 Telecommunications Act.

Third, this Commission should require that ILECs tariff a service offering whereby the ILEC accepts split-off voice traffic from CLECs that provide voice and data over a single loop. One of the most economical ways of providing xDSL service to price-sensitive residential customers is to use a single loop for voice and data service. This enables the customer to obtain both services without purchasing a second loop – an important cost savings in states like Texas where an unbundled digital loop costs as much as \$35. Some ILECs have addressed this problem by deploying a “single-loop” ADSL service using a “splitter.” CLECs currently are being artificially restrained from providing comparable one-loop products by the ILECs' refusal to place the splitter at the most efficient place in the central office and to carry the split-off voice traffic over the ILEC network. Accordingly, the Commission should mandate that the ILECs tariff a service offering that allows CLECs to hand-off the "split-off" voice traffic at the same rates the ILEC charges itself for the service.

Fourth, this Commission should convene a joint state/federal proceeding to focus on how the dramatic disparities between the loop and collocation prices charged in the different states will affect the rapid deployment of advanced services.

With the adoption of these four simple steps, as well as the proposed loop and collocation remedies proposed in the NPRM, this Commission will have laid a framework that will promote the rapid deployment of advanced services, to the benefit of all Americans.

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COMMENTS OF NORTHPOINT COMMUNICATIONS, INC.

As detailed below, NorthPoint Communications supports virtually all the tentative conclusions proposed in the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding. The separate affiliate provisions will provide ILECs with relief from unbundling and resale requirements, while creating a level playing-field among all advanced services providers. In addition, the proposed loop and collocation remedies will

help ensure that CLECs are able to quickly deploy broadband alternatives. These steps will go a long way towards ensuring widespread broadband deployment.

However, this Commission must confront one remaining – and even more critical -- issue. As explained below, in order to prevent "price squeezes" on competitive facilities-based providers, this Commission should: (1) require ILECs that offer advanced services on an integrated basis to impute the prices of monopoly inputs such as loops and collocation; (2) require ILECs that offer advanced services on an integrated basis to tariff the advanced service for resale – at an appropriate discount – within thirty days (or before initiating service); (3) require that all ILECs accept split-off voice traffic from CLECs at the same rates they charges themselves; and (4) convene a state-federal advisory board to focus on the dramatic disparities in the pricing of loops and collocation, which currently threaten the widespread deployment of advanced services.

I. MINIMUM COLLOCATION STANDARDS BASED ON “BEST PRACTICES” WOULD PROMOTE THE WIDESPREAD DEPLOYMENT OF ADVANCED SERVICES

In its July 23 ex parte on the ILECs' section 706 petitions, NorthPoint proposed 23 "best practices" that would provide CLECs' with easier access to the loops and collocation necessary to provide advanced services. NorthPoint is encouraged to see most -- if not all -- of these remedies in the proposed NPRM, and urges the Commission to mandate these "best practices" as minimum national standards.

Currently, one of the greatest limitations on CLECs' ability to provide xDSL service is the alleged lack of collocation space. Moreover, even where the ILEC makes collocation space available, CLECs face excessive ILEC-induced delays. A combination of anticompetitive and arbitrary ILEC procedures for ordering, purchasing, and delivering

physical collocation cages, for instance, often increases the total time to obtain cages to well over a year. These delays greatly limit customer choice yet could easily be remedied by simply eliminating the more arbitrary ILEC practices and requiring that all ILECs adhere to minimum national standards. NorthPoint thus supports national standards based on existing “best practices.” NPRM ¶¶ 123-124. Such standards will accelerate deployment of xDSL services by promoting the most efficient use of collocation space. NorthPoint agrees, moreover, with the Commission’s tentative conclusion that the states should be allowed to adopt more stringent standards. NPRM ¶ 124.

Availability of collocation is, however, only half the story. CLECs also require cost-effective collocation. The current system is characterized by a total absence of parity. NorthPoint has been charged non-recurring collocation charges ranging from \$10,000 to over \$300,000 for a single cage. These charges are the single largest barrier to entry into a particular market and uniform standards would facilitate entry by competitors that are trying to do business in several states. By contrast, the recent ILEC ADSL tariffs reveal that ILECs are imputing no collocation charges for their own services. For competition to develop, the wholesale charges for collocation must be decreased and ILECs must impute to their own services the collocation charges they collect from CLECs.

A. The Commission Should Require the ILECs to Permit the Collocation of All Equipment Used for Interconnection or Access to Unbundled Network Elements

The ILECs’ routinely argue that advanced telecommunications equipment (such as xDSL equipment) should not be placed in collocation cages, even where the equipment is used for “interconnection or access to unbundled network elements.” Local Interconnection Order, ¶ 579. Even after collocation space is obtained, ILEC

“gatekeeping” thus can preclude the CLEC from using the most efficient equipment available. NorthPoint urges the Commission to allow CLECs to collocate any equipment that is used for interconnection or access to unbundled network elements. NPRM at ¶ 129.

In particular, the Commission should clarify that DSL CLECs may collocate DSLAMs, which multiplex customer traffic from multiple xDSL lines onto a single DS-3. This Commission already has mandated that “transmission equipment such as optical terminating equipment and multiplexers, may be collocated on LEC premises.” Local Interconnection Order, ¶ 580 (emphasis added). Nonetheless, several ILECs initially refused to allow NorthPoint to collocate its DSLAM. To eliminate time-consuming and counterproductive disputes, this Commission should mandate that CLECs may place transmission equipment like the DSLAM in their collocation cages.

The Commission should also clarify that CLECs can place remote monitoring equipment and order remote management facilities to the collocation cage. ILECs, by definition, employ on-site technicians to monitor their CO equipment. CLECs, by contrast, rely on remote access management systems to monitor their equipment, since CLEC technicians cannot be stationed in ILEC COs. Several ILECs have attempted to ban remote access management equipment from collocation cages on the grounds that it “could” be used for switching purposes. This flies in the face of the Act. If equipment is “‘used’ or ‘useful’” for interconnection or to provide access to unbundled network elements, then the ILEC must permit collocation. There is no exception for equipment

that meets this criterion but that also could be used to provide enhanced services.¹ This can severely damage a CLEC's ability to provide xDSL service, since the remote access management equipment allows a CLEC to identify service troubles. Similarly, in order to use the remote access management equipment, the CLEC must be able to order retail service such as POTS lines to the collocation space. (Without these retail services, the CLEC has no means of accessing the remote access management equipment.)

In addition, where the ILEC chooses to establish an advanced services affiliate, the ILEC should be required to allow CLECs to collocate equipment to the same extent as its advanced data services affiliate. As the Commission has already suggested, any other standard would violate the ILECs' non-discrimination obligations under the Act. NPRM ¶ 130.

NorthPoint also supports the Commission's conclusion that CLECs should be allowed to collocate switching equipment. (¶ 129). That ability, however, should be limited to packet-switching equipment, which is significantly smaller than circuit-switched voice equipment. (A packet-switch is the size of a small refrigerator while a local

¹ The Commission has previously concluded that under section 251(c)(6) of the 1996 Telecommunications Act, incumbent LECs must permit the collocation of equipment that is "'used' or 'useful'" for interconnection to unbundled network elements. The FCC further clarified that:

Even if the collocater could use other equipment to perform a similar function, the specified equipment may still be 'necessary' for interconnection or access to unbundled elements under section 251(c)(6). We can easily imagine circumstances, for instance, in which alternative equipment would perform the same function, but with less function or at a greater cost. A strict reading of the term "necessary" in these circumstances could allow LECs to avoid collocating equipment of the interconnector's choosing, thus undermining the procompetitive purposes of the Act.

Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15794 at ¶ 579 (1996) ("Local Interconnection Order"). NorthPoint considers remote monitoring equipment necessary to access its unbundled network elements. Accordingly, under the Local Interconnection Order, remote monitoring equipment may properly be placed in NorthPoint's collocation space. NorthPoint thus proposes that CLECs be allowed to collocate integrated equipment that is used for interconnection or access to unbundled network elements but that also contains switching functions. NPRM at ¶ 129.

exchange switch can occupy an entire room.) This will provide some guarantee that no one provider will monopolize the collocation space in an end office. However, in order to make the most efficient use of scarce collocation space, NorthPoint supports the Commission's tentative conclusion (at ¶ 131) that if switching equipment is permitted to be collocated, no one provider should be allowed to monopolize the space. In particular, an advanced services affiliate of an ILEC should not be allowed to collocate its switching equipment if there is only enough room at the central office for one carrier to collocate such equipment.² NPRM ¶ 132.

Safety Standards. Both CLECs and ILECs have a strong and shared interest in ensuring that all equipment placed in their central offices meets industry safety standards, such as the Level 1 standards of the National Equipment and Building Specifications ("NEBS") standards promulgated by Bellcore. Bell Atlantic, however, is requiring CLECs to meet far more stringent NEBS Level 2 and 3 standards. This is entirely inappropriate since these standards deal almost exclusively with equipment reliability, not equipment safety. Ameritech agrees that ILECs have no legitimate reason in requiring that CLEC equipment meet specific reliability standards. Appendix at 4. Such concerns are properly left to the mutual agreement of the CLECs, their customers, and their equipment providers. By requiring certification to NEBS Levels 2 and 3, the ILECs condemn CLECs and their equipment vendors to months of testing, at a cost of hundreds of thousands of dollars, significantly delaying xDSL CLECs' ability to provide innovative broadband services. NorthPoint thus proposes that – regardless of what standard the

² NorthPoint also agrees with this Commission's tentative conclusion that the ability to collocate enhanced services equipment will not further promote broadband deployment. It is transport in the last mile – and not enhanced services – that remains the barrier to the widespread deployment of advanced services.

ILEC adheres to -- the ILECs be allowed to require NEBS Level 1 compliance, but not NEBS Level 2 or 3. NPRM ¶ 115.

NEBS Level 1 compliance should not be mandated nationwide, however.

NorthPoint supports this Commission's tentative conclusion that where the incumbent LECs uses equipment that does not mean NEBS requirements, CLECs should be allowed to collocate the same or similar equipment. NPRM ¶ 134. To ensure that this is feasible, NorthPoint also endorses this Commission's tentative conclusion that incumbent LECs should be required to publish all the equipment they use. NPRM ¶ 134. The Texas Public Utility Commission has required that Southwestern Bell Telephone list all equipment used within the CO, and there is no valid reason for why other ILECs cannot publish similar lists. This simple remedy would help to prevent discrimination by allowing independent verification that the ILECs are not using equipment they have prohibited CLECs from using.

B. Cost-Effective Physical Collocation and Alternate Collocation Arrangements are Necessary for Widespread Deployment of DSL Service

NorthPoint supports the Commission's proposed steps to make more efficient use of collocation space.

1. Collocation Alternatives. CLECs currently insist on physical collocation simply because most ILECs make no comparable solution available. ILECs, of course, have little reason to develop creative solutions since they can move their own xDSL equipment into central offices without worrying about space limitations, intervals, or imputed costs. CLECs have suggested numerous alternatives that would promote broadband service deployment if made available under reasonable terms and conditions.

Given the ILECs' reluctance to agree to such solutions, however, it is apparent that regulatory assistance is required.

NorthPoint's experience suggests that if a means of collocation is feasible for one ILEC, it is feasible for all. NorthPoint thus supports the Commission's tentative conclusion (at ¶ 139) that if one type of collocation is offered by one ILEC, there should be a presumption that it is technically feasible for every other ILEC to offer it. For example, BA recently filed a tariff for SCOPE, which appears to be virtually identical to U S WEST's SPOT offering. Accordingly, NorthPoint proposes that every ILEC should be required to offer all forms of collocation, including, but not limited to, the shared and cageless versions discussed in the NPRM.

a) Sharing. One of the simplest remedies proposed by the Commission, and one that is wholeheartedly endorsed by NorthPoint, is that this Commission require ILECs to permit CLECs to share their collocation space (e.g. multiple collocators within a single open or locked cabinet). This should also be extended to allow subleasing arrangements where the ILEC permits CLECs to sublet part of their collocation cages to other customer. Currently, most ILECs prohibit such arrangements. Accordingly, any CLEC that wishes to access another's collocation cage thus may do so only indirectly by relying on the collocated CLEC for all ordering and provisioning of UNEs. These administrative difficulties effectively prohibit such arrangements. Allowing a formal subleasing process would allow each CLEC to obtain its own UNE ordering identification code and thus allow for more effective use of existing collocation space.

b) Non-standard space configurations. Likewise, NorthPoint agrees that CLECs should be able to request space configured in any arrangement and of any size. As this

Commission has concluded (at ¶ 137), allowing CLECs to request space in increments less than 100 square feet will ensure more efficient use of scarce collocation space. For instance, if NorthPoint can request an 11x9 space rather than the standard 10x10, it can fit an additional two racks (more than 1100 customers). The Commission, would, however, limit the total area of the cage to no more than 100 square feet so as to ensure no carrier can acquire all the collocation space. Ameritech agrees with NorthPoint that collocation areas of less than 100 square feet should be available where mutually beneficial. Appendix at 3.

c) Cageless common collocation. NorthPoint also supports the Commission's proposal to require common collocation, where several CLECs share a common space. Ameritech agrees with NorthPoint that cageless physical collocation should be an option for negotiation. Appendix at 3. While common collocation can allow a CLEC to deploy service effectively, it is far less attractive than physical collocation, which allows a CLEC to maintain complete and exclusive control over its equipment. Addressing security issues is thus a paramount concern. See NPRM ¶ 141. NorthPoint agrees, however, that these concerns can be resolved. Id. NorthPoint suggests that concealed video cameras and computerized, tracked badges will be adequate to ensure that safety concerns are met. NorthPoint notes, however, that those few ILECs that do allow common collocation -- such as BellSouth and Pacific -- charge rates that are comparable or proportionally more expensive than those for physical collocation. Common collocation requires less space and thus should be much cheaper and quicker than physical collocation.

To date, CLECs have focused on obtaining physical collocation space in order to ensure that they are able to install and maintain their own equipment. Virtual collocation

arrangements currently are the only alternative in most states. Currently, however, virtual collocation --where the CLEC's equipment is intermixed with the ILEC's and the ILEC owns, installs and maintains the equipment -- severely limit the CLEC's ability to respond to service problems and its flexibility to deploy new services. In addition, the pricing of virtual collocation arrangements is rarely made cost-effective. In California for instance, NorthPoint was originally quoted more than \$100,000 for a virtual collocation arrangement, of which the vast majority was for training ILEC employees to maintain NorthPoint's equipment.³ Virtual collocation arrangements in which the CLECs can own, install and access their own equipment would not pose the same disadvantages and would provide many of the benefits of physical collocation. Ameritech agrees that CLECs should be able to purchase their own equipment for virtual collocation, and use installation contractors to install that equipment. Ameritech also agrees that CLECs should not be charged for training ILEC technicians, and that CLECs should be able to use their own technicians to service virtually collocated equipment. Appendix at 3. Accordingly, this Commission should require the ILEC's development of virtual collocation arrangements where the CLEC can own, install and maintain its own equipment.

2. ILECs should be required to remove obsolete equipment and non-critical administrative offices in COs to increase the amount of space available for collocation.

Because the rush for collocation is a very recent phenomenon, freeing up space in COs has received little attention. In the only related state proceeding to date, U S WEST testified

³ NorthPoint agrees with the Commission's tentative conclusion that competitive LECs must be offered the same virtual collocation arrangements the ILEC provides its advanced services affiliate in order to meet its existing obligation to provide collocation on nondiscriminatory terms and conditions. NPRM ¶ 148.

that it frequently has large, obsolete, older-model switches in its COs which it does not bother to remove until it needs the space for its own uses. U S WEST admitted that it would not remove such equipment when CLECs applied for collocation in these types of COs; instead, it considers the CO to be out of space. In addition to obsolete equipment, the few CO floor plans that have been made public to date also reveal large numbers of administrative offices, which were added when space was not at a premium. Many or all of these offices could be moved to regional administrative office centers with little hardship. Ameritech agrees that removal of inactive equipment and conversion of administrative space is an option that should be considered. Appendix at 2. NorthPoint thus supports the Commission's tentative conclusion (at ¶ 142) that ILECs should be required to remove obsolete equipment and noncritical administrative offices identifiable from CO floor plans.

3. Allocation of Up-front Space Preparation Charges. Several ILECs currently require the first collocater to pay 100 percent of conditioning an office to make it suitable for collocation, (i.e. asbestos removal, additional power, etc.), subject to a rebate when additional CLECs request collocation space in that CO. Since the bill to the "first-mover" can run well over a half million dollars, with no guarantee of a rebate, CLECs have a powerful incentive to wait until someone else has entered the CO before submitting their request. This has led to a reluctance to act first that has diminished consumers' ability to choose among broadband services. The ILECs, moreover, appear to have no mechanism for tracking these refunds. NorthPoint has paid up to three hundred thousand dollars to obtain reconditioned space in a central office, and has yet to receive a penny in refunds. NorthPoint thus supports the approach pioneered by Bell Atlantic in

New York, where the CLEC is responsible only for its share of the cost of conditioning the collocation space, whether or not competing providers are immediately occupying the rest of the space. Ameritech agrees that the average first-in cost should be recovered over time from multiple customers based on demand estimates, and that there should be no “first-in” penalties. Appendix at 3. NorthPoint supports the Commission’s proposed conclusion that this standard should apply as minimum requirements nationwide. NPRM ¶ 144.

4. Collocation Space Preparation and Construction. Similarly, the Commission should adopt the “best practices” in terms of construction and space preparation. (¶ 142). Uniform national standards for space preparation and construction would facilitate competition in the marketplace.

5. Arbitrary Limits on Ordering Collocation. Currently, once a CLEC is allowed to purchase physical collocation space, it can expect to wait a minimum of four months to have the cage constructed. Arbitrary ILEC ordering requirements, however, routinely subject CLECs to several month delays before they are even able to purchase collocation space. For instance, US WEST has arbitrarily prevented NorthPoint from ordering collocation for several months by refusing to allow NorthPoint to place an order in any state in which it has not signed an interconnection agreement and obtained State commission approval of the agreement (this also requires that the CLEC be qualified in that State, since the state commission will not approve an interconnection agreement until a CPCN has issued). These steps take a minimum of six months in most states; U S WEST thus has kept NorthPoint from placing a single collocation order in its territory to date. By contrast, Bell Atlantic, Ameritech, and Pacific Bell have tariffed physical

collocation at the state or federal level, which allows a CLEC to order a cage immediately. See also Appendix at 2. Immediate ordering allows the CLEC to have a cage built while it is in the process of obtaining CLEC authority and a signed and approved interconnection agreement during the 4-12 month it takes the ILEC to build the collocation space. Immediate collocation ordering rights thus promotes speedier broadband deployment. NPRM ¶ 144.

6. Unreasonable Quote Request Policies. While arbitrary ordering restrictions could be easily remedied, this Commission should also address the barrier that is posed by the ILECs quote request policies. Before physical collocation can be purchased, ILECs require CLECs to confirm availability and price by filing a request for quote. Ameritech provides quotes within 10 days regardless of the number of quotes submitted at any time. Other ILECs, however, require dramatically different intervals for providing a quote. For example, it took SBC almost 4 months to provide NorthPoint with quotes for several dozen Central Offices in Texas. This causes unnecessary delay on top of the excessive waits for a cage once an order is placed. The Commission should thus require the ILECs to provide quotes as to both price and availability within 10 days, regardless of the number of quotes submitted at any time.

7. Cage Construction Intervals. After a quote is accepted, the ILEC begins constructing the actual collocation cage. Cage completion intervals for ILECs range from 90 days on up. In non-ILEC offices housing ISP equipment, similar cages generally are constructed in less than 30 days. There is simply no reason for ILECs to take more than 90 days to construct a cage in conditioned space, which generally requires only the extension of power, air conditioning, and the construction of a reinforced steel mesh cage

to separate the cage from the rest of the central office. ILECs, however, currently have no incentive to deliver a cage in a timely manner. Accordingly, the Commission should require the ILECs to deliver cages within 90 days.

In an increasing number of instances, CLECs are told that space could be made available but it must first be conditioned for collocation, e.g., asbestos must be removed, special air conditioning and power must be added. While some ILECs – such as Bell Atlantic South -- condition space within 120 days, others provide conditioning only within 180 days or, worse yet, on a wholly arbitrary “individual case basis.” There is no reason to allow some ILECs to unilaterally determine a reasonable interval when others require only 120 days. Accordingly, the ILECs should be required to provide cages in unconditioned space within 120 days.

8. Late Cage Deliveries. Even after a CLEC obtains a promised due date, its problems are not over. NorthPoint has not had a single cage completed and released prior to its planned completion date (regardless of the amount of work required). Moreover, while most of the cages it purchased in Los Angeles were satisfactorily delivered, almost all the cages NorthPoint purchased in New York and San Francisco were either delivered late or had some flaw that rendered them unacceptable. This causes great hardship in terms of carefully planned installation schedules and customer expectations. (While SWBT requires five days to fix flaws in the cage, other ILECs provide no guarantee of when flaws will be fixed.) Currently, neither late nor flawed deliveries are reported and late completion have no consequences. In order to remedy this problem, the Commission should grant every ILEC five days to fix flaws in the cage, but require reporting of missed

cage construction dates, and impose monetary sanctions or other regulatory penalties (such as denial of section 271 relief) when intervals are consistently missed.

CLECs' ability to deploy broadband services has been hampered by arbitrary pricing of collocation cages. Application fees vary between \$0 (Pacific Bell) and \$7500 (Bell Atlantic North). Charges for cage construction range from \$10,000 in Georgia to more than three hundred thousand dollars. Power, heating, and ventilation ("HVAC") installation charges can range from \$2,000 to \$12,000. Other disparities include the monthly recurring costs for the cage, which ranges from \$700 to \$2,000. These glaring disparities arbitrarily limit the economic viability of providing broadband service to consumers. To police against anticompetitive pricing, regulatory bodies must ensure these arbitrarily high prices are reduced.

C. Space Exhaustion Must be Remedied

NorthPoint also agrees with the Commission's tentative conclusion (at ¶ 146) that ILECs should be required to provide detailed floor-plans and allow walk-throughs to interested CLECs wherever they contend space for physical collocation is unavailable. The FCC's Interconnection Order contemplated that ILECs would submit detailed floor plans when asserting that space was unavailable. Local Interconnection Order, ¶ 585. Few have done so, however, and there thus has been precious little review of the reasonableness of the space limitation claims asserted by ILECs. Accordingly, NorthPoint agrees that the ILECs should be required to provide both the floor plans and allow a walk-through whenever they contend an office is closed. This will allow the State commissions to make determinations based on input from all interested parties. (¶ 146). Ameritech agrees that inspection of floor plans should be permitted. Appendix at 2.

In California, NorthPoint and other facilities-based CLECs filed a motion demanding floor plans for 59 offices that Pacific asserted were out of space. Shortly thereafter, amid increasing scrutiny by CLECs and state regulators, Pacific found additional space in two-thirds of the 59 offices that it had declared to be closed. Thus, even the threat of third-party scrutiny can force an ILEC to be more conscientious in identifying available space. Floor plans also allow for independent verification that an ILEC's claims of lack of space are reasonable. NorthPoint also supports collocation reports of the type proposed by the Commission (§148) that would provide CLECs with an opportunity to review the status of collocation in any office at any time.⁴

Warehousing. (§ 149) First, the Commission should begin by admonishing the ILECs to obey the existing anti-warehousing rules. These are being given lip service at best. Second, the ILECs should be prohibited from warehousing unlimited space for potential future needs. In California, for instance, Pacific Bell recently announced it would be deploying its own retail ADSL service in several COs which it had declared closed to CLECs. Yet at the time it was informing CLECs that no physical collocation space was available, Pacific clearly had reserved sufficient space in those same COs for its own ADSL service. By contrast, ILECs impose on CLECs specific "anti-warehousing" rules whereby CLECs lose their collocation space if they do not utilize it in a certain period of time, generally around six months. Parity requires that first-come first-serve rules apply equally to all carriers and that all carriers be barred from warehousing.

⁴ In areas where the ILEC can legitimately demonstrate that no physical collocation is available, the Commission should require the ILECs to provide an effective virtual collocation alternative.

II. NATIONAL LOOP STANDARDS ARE NECESSARY TO PROMOTE DEPLOYMENT OF ADVANCED SERVICES

A. Incumbent LECs Should Be Required to Fulfill Their Existing Loop Unbundling Obligations

As the Commission has made clear, the ILECs should be required to fulfill their existing obligations to provide unbundled xDSL Compatible Loops. Section 706 Order ¶ 61. To date, few ILECs have been willing to provide unbundled xDSL loops. The ILECs do not advance any technical justification for this refusal – instead, they proclaim that such loops will not be made available until the ILEC itself begins offering ADSL service. Nor could there be any technical justification, since there is simply no reason that BellSouth can provide an unbundled xDSL compatible loop while U S WEST, for instance, can not. Accordingly, this Commission should reaffirm that ILECs are required to condition loops to CLECs' specifications subject only to concerns of technical feasibility.⁵ Nor should the Commission give any credence to claims that this would require the ILECs to improve existing networks, since the ILECs currently undertake this very loop conditioning process for their HDSL T-1 offerings.

B. CLECs Should be Provided Access to Loop-Conditioning Databases

CLECs ability to provide xDSL service is significantly hampered by their inability to verify whether customer premises can be served. NorthPoint thus supports the Commission's tentative conclusion that CLECs should be provided with access to a database that contains information on "whether loops pass through remote concentration devices, electronics attached to loops, condition and length of loops, loop length and the

⁵ In addition, the Commission should make clear that loop conditioning charges must be reasonable.

electrical parameters that determine the suitability of loops for various xDSL technologies.” NPRM at ¶ 157. NorthPoint also supports the Commission’s tentative conclusion (id.) that, pursuant to the existing nondiscrimination requirements, CLECs should have access to the same loop interfaces providing loop information as the ILECs. (NorthPoint urges this Commission to require true parity in access; to date, NorthPoint has been unable to access the only operative loop qualification database, that of Bell Atlantic.) And as new information becomes available, ILECs must share such information immediately. Id. ¶ 158.

C. All Market Participants Should be Subject to the Same Spectrum Management Requirements

NorthPoint supports the use of national industry standards for spectrum management, as does Ameritech. Appendix at 5. Currently, NorthPoint is concerned that spectrum management issues will allow the ILECs to stifle broadband alternatives. In fact, it appears that the ILECs already are using spectrum management as a means to exclude competitors. Southwestern Bell, for instance, recently informed NorthPoint that it will not be permitted to provide service greater than 784 Kbps over Southwestern Bell unbundled loops. SWBT has stated that its tests have indicated that any greater speed will create interference in the binder groups.

But SWBT also has refused to provide NorthPoint with the model that SWBT is using to gauge interference. This study was apparently prepared by an SBC consulting subsidiary using a proprietary Alcatel study, and does not agree with other studies conducted by more impartial entities such as Bellcore and the chip manufacturer Rockwell. Nonetheless, SWBT apparently is requiring every provider to conform to this

unilaterally imposed standard. National standards will preclude ILECs from using arbitrary spectrum management policies as an anticompetitive tool, and this Commission should specifically prohibit ILECs like SWBT from unilaterally imposing policies before appropriate industry standards are in place.

NorthPoint agrees with the Commission's proposal (at ¶ 161) to apply the same spectrum management rules to both ILECs and new entrants. NorthPoint does not, however, suggest that a "riparian rights" would be appropriate. Since some interference from new technology is inevitable, such a rule would effectively prohibit new carriers from deploying any equipment that interferes in any way with that already in place. This would impede competitors' ability to deploy innovative competition and thus slow the deployment of broadband services to consumers.

D. Unbundling Loops that Pass Through Remote Terminals

Another crucial issue identified by the Commission is the necessity of promoting broadband deployment to the 20% of end-users that are served by digital loop carriers ("DLCs"). Since xDSL service is incompatible with fiber, the Commission should adopt minimum national standards to allow CLECs to provide broadband alternatives to these end-users. The simplest of these standards is to require the ILECs to determine whether alternate copper loops are available whenever the customer is served by a DLC or remote switching module. In many cases, the ILECs installed DLCs but left the existing copper in place, and the ILECs should be required to verify whether alternate copper is available whenever a CLEC requests a loop to a customer served by fiber. This process may not turn up a loop in every case. Accordingly, the ILEC also should be required to cut existing customers served over copper loops to the DLC, thereby freeing up the copper loop for

xDSL service. This two-step process, in fact, is currently used by Pacific Bell. As a consequence, NorthPoint has not lost a single end-user to fiber in Pacific's territory. By contrast, in Massachusetts, where Bell Atlantic apparently follows neither of these steps, NorthPoint has lost a significant percentage of customers to fiber. National standards requiring that ILECs look for alternate copper – and vigorous policing of those standards -- will facilitate entry and promote deployment. (NorthPoint also agrees that the Commission's tentative conclusion that the states should be allowed to set more stringent standards than the national "floor." NPRM ¶ 155.)

NorthPoint also supports the FCC's tentative conclusion that CLEC may request any technically feasible method of unbundling the DLC-delivered loop. Where an ILEC shows one method is infeasible, CLEC should be allowed to request another unbundling method. If none is feasible, the ILEC should be required to suggest a method that provides the loop closest in quality and functionality to that the CLEC has requested. (¶ 171). NorthPoint also agrees that where the ILEC should make available to CLECs all types of loops it makes available to its affiliate. (¶¶ 168, 172).

NorthPoint also agrees with the FCC's tentative conclusion that ILECs must provide sub-loop unbundling and permit CLECs to collocate at remote terminals. (¶ 174). Failure to do so would stymie competitive entry to serve consumers on DLCs. NorthPoint supports this Commission's decision to conduct a workshop on this issue, and suggests that the line cards on a DLC be allocated on a first-come, first-served basis.⁶ If sub-loop unbundling is technically infeasible or if there is no space at the RDT (or if the

⁶ NorthPoint suspects that placement of a contiguous CLEC DLC would be both economically and administratively infeasible.

FCC does not mandate sub-loop unbundling), the ILEC should be required to provide a loop of the same quality and functionality at no greater cost.⁷

III. SEPARATE AFFILIATE REQUIREMENTS

NorthPoint supports the FCC's proposed separate affiliate requirements, which would ameliorate many of the concerns that might otherwise exist with respect to the possibility of discrimination and cross-subsidization by the ILEC. NorthPoint accordingly urges the Commission to adopt the level of separation outlined in its NPRM, which, with the small modifications discussed below, will ensure parity between CLECs and ILECs' advanced services affiliates.

A. General Requirements for Advanced Services Affiliates

1. Jointly Owned Switching Facilities, Land, Buildings. The Commission suggests that the incumbent and its advanced services affiliate may not “jointly own switching facilities or the land and buildings on which such facilities are located.” (NPRM, ¶ 96) NorthPoint supports this proposed rule. The objective of the advanced services affiliate rules is to create affiliates that are truly separate from ILECs so that transactions between them can be conducted at arm’s length and so that ILEC incentives to favor their affiliates can be minimized. Joint ownership of such vitally important assets as switching facilities blurs the lines of separation between ILECs and advanced services affiliates, making truly independent operation and proper incentives impossible.

⁷ NorthPoint agrees with the Commission’s tentative conclusion that providing an unbundled xDSL-compatible loop should be presumed technically feasible if the ILEC is providing xDSL services over that loop. NPRM ¶ 167. NorthPoint agrees that the ILECs should have the burden of demonstrating that it is technically infeasible to provide requesting carriers with xDSL compatible loops (¶167), since the ILEC has all the relevant information within its possession and the CLECs have none.

We note that with regard to section 272 affiliates, the Commission has recognized an exception to joint ownership prohibitions that permits Bell Operating Companies (“BOCs”) that have purchased sophisticated equipment from related affiliates to obtain support services for the equipment from the affiliates on a “compensatory basis.”

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rule-Making, 11 FCC Rcd 21905, ¶ 164 (1996) (“Non-Accounting Safeguards Order”), Order on Reconsideration, 12 FCC Rcd 2297, *recon. pending, petition for summary review in part denied and motion for voluntary remand granted sub nom.*, *Bell Atlantic v. FCC*, No. 97-1067 (D.C. Cir. Filed Mar. 31, 1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff’d sub nom. Bell Atlantic Telephone Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Second Report and Order, 12 FCC Rcd 15756 (1997). True parity between affiliates and CLECs requires that if such an exception is to apply to advanced services affiliates, similar accommodations must be made for CLECs.

2. Arm’s Length Transactions; Reduced to Writing; Available for Public Inspection. The Commission has suggested that all transactions between ILECs and advanced services affiliates must be conducted at arm’s length, subject to affiliate transaction rules as modified in the *Accounting Safeguards* proceeding. (NPRM ¶ 96, citing, *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, 11 FCC Rcd 17539, 17593 (1996) (“Accounting Safeguards Order”). The accounting safeguards that the Commission proposes to apply to ILEC-affiliate transactions establish cost allocation rules

and provide guidance as to transaction valuation, with the goal of having transactions take place on market-driven terms. Pursuant to the rules proposed by the Commission, all ILEC-affiliate transactions must not only comply with the accounting safeguards, but also must be reduced to writing, and a written description of each transaction must be posted by the affiliate on the company's home page on the Internet within ten days of the transaction's completion. (NPRM ¶ 96).

We support these proposed rules, which we believe are among the most crucial in the NPRM. Without such rules, CLECs and the Commission will have no means of ensuring compliance and equality. Evidence of the details of transactions are essential to any meaningful analysis of the true relationship between ILECs and advanced services affiliates. This information will also provide CLECs with a critical, objective basis for comparison. Scrutiny of the terms of ILEC-affiliate transactions will permit both CLECs and the Commission to detect infractions of the rules adopted as a result of this NPRM.

3. Separate Books, Records, Accounts. The Commission has tentatively determined that an incumbent and its affiliate must maintain separate books, records and accounts. (NPRM, ¶ 96). NorthPoint supports this rule, which it believes is essential in order to keep incumbents and their affiliates truly separate. Without separate books and records, it would be easy for ILECs and their advanced services affiliates to obscure prohibited sharing of resources and expenses and to hide various other ILEC-to-affiliate subsidies. Such activities would obviously give the advanced services affiliates an unfair competitive advantage over CLECs and defeat the purpose of the separate affiliate rules.

4. Separate Officers, Directors, Employees. The Commission has suggested that an incumbent and its affiliate must have separate officers, directors and employees.

(NPRM, ¶ 96). Once again, we believe this rule is essential in order to keep ILECs and their advanced services affiliates truly separate. Officers, directors and employees of an ILEC who are also officers, directors or employees of an advanced services affiliate have a fiduciary responsibility to seek to promote the interests of the affiliate. ILECs and their officers, directors and employees cannot be permitted to favor advanced services affiliates over CLECs in such a manner if competitive equality is to be achieved or maintained. NorthPoint therefore supports this proposed rule.

5. No Recourse to Incumbent ILEC on Loans to Affiliates. The Commission has suggested that affiliates ought to be prohibited from taking loans that permit creditors to have recourse to the assets of affiliated ILECs in the event of default. (NPRM, ¶ 96) NorthPoint supports this prohibition. Affiliates do not need such recourse, and, to the extent that they receive it, the advanced services affiliates would enjoy a distinct advantage over CLECs, as they would be permitted to obtain credit on terms based not upon their own financial states, but upon the financial state of the affiliated ILEC. Obviously, CLECs do not enjoy such a relationship and have to obtain credit based solely upon their own resources.

6. No Discrimination in Provision of Goods, Services, Facilities, Information or the Establishment of Standards. The Commission proposes that an ILEC, in dealing with its advanced services affiliate, may not “discriminate in favor of its affiliate in the provision of any goods, services, facilities or information or in the establishment of standards.” NorthPoint strongly supports the proposed rule and urges that it be interpreted broadly and in accordance with the guidelines established for section 272 affiliates in the Non-Accounting Safeguards Order.

The Non-Accounting Safeguards Order clarifies that non-discrimination is a stringent standard that requires the incumbent to provide the same rates, terms and conditions to both affiliates and competitors (Non-Accounting Safeguards Order ¶ 178) with regard to any good, service, facility, information or standard. (Non-Accounting Safeguards Order ¶ 210) Unlike other provisions of the Act, the standard does not permit “reasonable discrimination.” (Non-Accounting Safeguards Order ¶ 197, citing Section 202 of the Act). The provision covers initial installation requests, subsequent requests, upgrades, modifications, repairs and maintenance. (Non-Accounting Safeguards Order ¶ 239). Service intervals must be disclosed. (Non-Accounting Safeguards Order ¶ 115).

Under the non-discrimination provisions, adoption of any standard that favors a section 272 affiliate and disadvantages a non-affiliate constitutes a *prima facie* case of unlawful discrimination. (Non-Accounting Safeguards Order ¶ 227). A *prima facie* case of discrimination is also raised by any demonstration by a non-affiliate that it does not receive the same rates, terms and conditions as an affiliate.

These strict non-discrimination guidelines, developed for section 272 affiliates and established in the Non-Accounting Safeguards Order, must be fully imported to amplify the advanced services affiliate non-discrimination rules. Prohibitions on discrimination go to the heart of the purpose of the NPRM: comparable competitive conditions for advanced services affiliates and CLECs as a means of more rapidly achieving deployment of advanced telecommunications technologies. By definition, discrimination by ILECs in favor of affiliates contradicts this principle by interfering with competition. The clear, simple, strong guidelines articulated by the Non-Accounting Safeguards Order provide a roadmap for prevention of discrimination.

7. Arm's Length Incumbent-Affiliate Interconnection: Elements, Interfaces, Facilities and Systems Available to CLECs. The Commission proposes to require that advanced services affiliates interconnect with ILECs "pursuant to tariff or pursuant to an interconnection agreement." (NPRM, ¶ 96) Any network elements, facilities, interfaces and systems provided by the incumbent to the affiliate would have to be made available to CLECs as well. (NPRM, ¶ 96).

NorthPoint supports both of these proposed rules. The requirement that advanced services affiliates interconnect via tariffs or interconnection agreements, like the ILEC-affiliate transaction reporting requirements, ensures a record that can be used to analyze the ILEC-affiliate relationship. As discussed above, such records facilitate detection of anti-competitive activity. Prevention and enforcement are enhanced. Operating together with the obligations imposed by section 252(i) of the Act – which provides that ILECs must offer to CLECs all interconnection, services or network elements provided to affiliates on "the same terms and conditions" – this rule should help ensure that ILECs and their affiliates negotiate in good faith.

The requirement that ILECs provide to CLECs all network elements, facilities, interfaces and systems that are provided to advanced services affiliates reinforces the prohibition on discrimination that is at the heart of the NPRM. The theory that rapid deployment of new telecommunications technologies depends upon competition leads to the conclusion that barriers to CLEC competition with ILECs and/or their affiliates must be eradicated.

8. Reporting Requirements. The Commission asks for proposals for specific modifications to its proposed structural separation and non-discrimination requirements.

(NPRM, ¶ 97). In addition to the suggestions articulated above, NorthPoint believes that appropriate reporting requirements ought to be imposed. Reporting requirements are a highly effective means of identifying, and thus preventing, discrimination. Ameritech agrees that ILEC compliance with non-discrimination requirements with respect to collocation should be gauged through performance measurements. Appendix at 2.

The Non-Accounting Safeguards Order was accompanied by an NPRM that focused upon reporting requirements and contained a sample report as an appendix. A similar report, adapted to track issues related to advanced services rather than interLATA services, ought to be mandated in order to permit monitoring of anti-competitive behavior in the provision of advanced services. NorthPoint suggests that the Commission affirmatively decide in its Order to require reporting, but delegate to the Common Carrier Bureau responsibility for designing the proper reporting form. The Bureau should be directed to seek industry input in developing the form. NorthPoint believes that the report should include information on collocation and loops, and provide data regarding actual ordering, provisioning, and repair times.

All ILECs should be required to complete the report that is ultimately generated by the Common Carrier Bureau. It should be signed by a company vice president, filed with the FCC and posted on the home page of each ILEC. Penalties should be imposed for false reporting.

If the Commission and others are to ensure that CLECs and advanced services affiliates are being treated equally, information regarding how the affiliates are being treated compared to CLEC competitors is essential. The sample reports will provide it.

B. Miscellaneous Specific Proposals

1. Sunset Provisions. The Commission seeks comments as to whether “any separation and other safeguards should sunset after a certain period of time or change in conditions.” (NPRM, ¶ 99). As explained below, a sunset for the separate affiliate rules for advanced services is not consistent with the policies of the Act.

The purpose of the separate affiliate rules, like that of all the rules dealing with ILEC provision of advanced services, is to ensure that CLECs are given equal access to the loops and collocation necessary to provide advanced services so that they can compete with ILECs in providing these services. As discussed elsewhere in these comments, CLECs are utterly dependent upon access to these loops and collocation in order to provide advanced services. The need for access to these elements may never disappear, and is unlikely to occur in the foreseeable future. Thus, the Commission should not “sunset” or otherwise end the obligation of the ILECs to make loops and collocation available to the CLECs. To do so would thwart the ability of CLECs to provide advanced services and is inconsistent with the procompetitive purpose of the Act.⁸

2. Virtual Collocation Equality. The Commission seeks suggestions as to whether virtual collocation arrangements currently favor affiliates over CLECs, and, if so, how this can be rectified. (NPRM, ¶101). As discussed above, see pp. 9-10, existing virtual

⁸ The separate affiliate requirements for RBOC interLATA affiliates, which sunset after three years of operation, are not analogous. Under section 271, BOCs are not permitted to offer interLATA services until the Commission determines that effective local competition exists or a fourteen-point checklist has been met. If this checklist is met but subsequently violated, the BOC's section 271 authority can be revoked. There is no comparable entry checklist for ILEC advanced services affiliates, and thus no threat that such affiliates will lose their authority to provide advanced services free of section 251(c)(4)'s resale and unbundling restrictions. Accordingly, a sunset provision is entirely inappropriate for an advanced services affiliate.

collocation arrangements discriminate against CLECs by prohibiting them from owning, installing and maintaining their own equipment. By contrast, ILECs currently are able to own, install, and maintain their own equipment. This discrepancy should be remedied and CLECs should be permitted to own, install and maintain their own equipment.

3. Remote Collocation Equity. In order to achieve collocation parity, the Commission must ensure that rules regarding equal access to collocation extend to govern provision of collocation at remote facilities. Therefore, the Commission should clarify that if an ILEC permits its affiliate to collocate in a remote switching center it must afford the same opportunity to CLECs.

C. Rules Regarding Transfers from Incumbent LECs to Affiliates

The general policy goal of transfer rules should be to ensure that the separate affiliate has access to everything to which a CLEC has access, but does not have access to anything to which a CLEC does not have access. With this parity principle in place, ILECs, in addressing the needs of their affiliates, will take actions that also address the needs of CLECs. This principle gives rise to a simple approach to prospective ILEC-to-affiliate transfers: NorthPoint encourages the Commission to design all transfer rules to ensure that ILEC separate affiliates receive everything that the CLECs can have, yet be given nothing that CLECs cannot have. This is a simple rule to enforce: ILECs should be permitted to transfer DSLAMs -- but not loops, collocation or transport -- to their advanced services affiliates.

1. Transfers of Loops to Affiliates; Other Affiliate Acquisition of Loops. The Commission suggests that if a BOC transfers ownership of any network element that must be unbundled pursuant to section 251(c)(3) of the Act to an affiliate, the affiliate will

automatically be deemed a section 3(4) “assign” of the BOC with respect to the transferred element. (NPRM ¶ 105). It tentatively concludes that any transfer of local loops from an incumbent to an affiliate – whether or not “*de minimis*” – would make the affiliate an “assign” of the incumbent subject to section 251(c) with respect to those loops. (NPRM ¶¶ 106, 108) It seeks comment as to whether an affiliate should be treated as an “assign” or not if it acquires loops (and other network elements) by means other than a transfer from a BOC. (NPRM ¶ 105).

NorthPoint believes that all loops should be subject to section 251(c) regulation. Loops are a monopoly network element. They are absolutely essential to permit CLECs to provide advanced services. The Act wisely provides for multiple approaches to competition, and CLECs are pursuing all these approaches. Any action that would exempt existing loops from section 251 application, leaving them unregulated in the hands of advanced services affiliates, would simultaneously (1) weaken the position of CLECs, further restricting their access to loops and their ability to provide services and to compete; and (2) provide an unfair advantage to advanced services affiliates, which would instantly enjoy ownership of their own loops, without being required to build them.

To prevent fundamental inequality between CLECs and ILEC affiliates, we believe that the advanced services affiliates – non-incumbent entities free from section 251 regulation – should not be permitted to own loops, but rather should be required to lease them. Under such a scheme, any affiliate that owned its own loops would be treated as an ILEC subject to section 251 regulation.

2. Transfers of Collocation Space. The same analysis that governs transfers of loops applies with equal force to transfers of collocation space. As with loops, ILEC

advanced services affiliates should be allowed to lease – but not own – collocation space. The ILECs, however, currently have equipment in collocation space. Since that collocation space may not be transferred, the ILEC's advanced services affiliate should be required to remove existing collocated equipment unless the ILEC makes identical collocation arrangements – on equal terms -- available to CLECs within three months. In the alternative, the ILEC advanced services affiliate should be required to remove existing collocated equipment and request collocation space like any other CLEC.

3. Transfers from Incumbents to Affiliates of Existing Facilities used to Provide Advanced Services; *De Minimis* Exception. As the Commission notes, some ILECs have already purchased facilities used to provide advanced services, including, but not limited to, DSLAMs and packet switches. (NPRM ¶ 106). NorthPoint supports the Commission's tentative conclusion that wholesale transfer of such facilities to an affiliate makes the affiliate an "assign" of the incumbent. (NPRM ¶ 106).

The Commission asks for comments as to whether a *de minimis* exception should exist "under which a limited transfer of equipment would not make an advanced services affiliate an assign of the incumbent LEC." (NPRM ¶ 108). The Commission suggests that such an exception would apply "only to transfers of facilities used specifically to provide advanced services such as DSLAMs, packet switches and transport facilities, and not to other network elements, such as loops." (NPRM ¶ 108).

NorthPoint supports the development of a workable separate affiliate and supports the removal of obstacles to ILEC use of appropriately structured advanced services affiliates. Hence, NorthPoint supports the creation of a waiver process whereby ILECs would be permitted to apply for a waiver from a general prohibition on transfers to

advanced services affiliates. We believe that the waiver process should apply only to proposed transfers of DSLAMs. While waiver applications ought to be acted upon expeditiously, they should be granted only upon a showing of limited anti-competitive impact made after opportunity for public comment and thorough review by the Commission.

4. Time Limitation on Transfers Pursuant to Possible *De Minimis* Exception.

The Commission asks whether, if it recognizes a *de minimis* exception, it ought to impose a time limitation on transfers made pursuant to that exception. (NPRM, ¶ 109).

As discussed above, NorthPoint supports a waiver process whereby ILECs would obtain preapproval to transfer DSLAMs to their advanced services affiliates. NorthPoint believes that waivers should be granted only for equipment purchased prior to the release date of the NPRM. Transfers of equipment purchased subsequent to that date are suspect as potential attempts to “grandfather” transactions that ILECs anticipated would be forbidden under the rules adopted pursuant to the NPRM process. Such behavior should not be rewarded, and the burden should be put upon ILECs to demonstrate – through the waiver process -- that any post-release purchase was not made for such purpose.

5. Transfer of Assets Other than Network Elements. The Commission recognizes that in addition to network elements, ILECs may wish to transfer other assets to advanced services affiliates and asks what other assets, if any, are appropriate for such transfer. (NPRM, ¶ 113).

The principle described above applies here as well: transfers to affiliates should not occur unless CLECs have the same ability to be the transferees. Therefore, no transfer of customer accounts or customer proprietary information without prior authorization

should be permitted if the affiliate is to retain non-incumbent status. This information would provide advanced services affiliates with a decided competitive advantage over CLECs. With respect to CPNI, in particular, the Commission should clarify that advanced services provided by affiliates are not “local services” for purposes of determining permissible sharing of CPNI between ILEC and affiliate. The Commission’s rules must ensure that the ILEC and the affiliate cannot share CPNI unless the customer is taking local service from the ILEC and DSL service from the affiliate. Otherwise, the affiliate will be given a significant and unwarranted competitive advantage. *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8102-07, ¶¶ 55-59, at n. 209 (1998), *recon. pending; clarified*, Order, DA 98-971 (Com. Car. Bur. Rel. May 21, 1998).

6. Network Disclosure Rules. Section 251(c)(5) of the Act imposes network disclosure requirements upon ILECs. The Commission seeks guidance as to whether these requirements are sufficient to notify CLECs “who might be using, or planning to use, facilities of the incumbent LEC that those facilities are being transferred to an advanced services affiliate.” (NPRM, ¶ 115). The Commission should clarify that ILECs are required to disclose network information to CLECs at the same time ILECs disclose the information to their advanced services affiliates.

D. Enforcement

As important as properly defined separate affiliate rules are, the rules will do no good unless they are enforced.

The NPRM speaks little of enforcement of its prospective rules. NorthPoint encourages the Commission to give significant thought to enforcement mechanisms before authorizing advanced services affiliates that are not subject to incumbent regulations. Relief from the burdens of ILEC regulation is justified if and only if structural separation and non-discrimination requirements are not only constructed but enforced so that the advanced services affiliates are actually made more or less competitively equal to CLECs.

NorthPoint believes the Commission should look to the Non-Accounting Safeguards Order for important rules of enforcement procedure. Particularly, the Commission should apply to the advanced services affiliate rules the provision of the Non-Accounting Safeguards Order that places the burden of production on the incumbent every time a *prima facie* case of violation is shown. (See Non-Accounting Safeguards Order, ¶ 345). As noted in the Non-Accounting Safeguards Order, this rule of procedure accelerates access to information and thus resolution of disputes and imposition of any necessary policing. Additional streamlined dispute procedures, including use of the rocket docket, are desirable. These mechanisms will permit CLECs to protect themselves against violations as well as stonewalling and delay.

CLECs also require that the Commission pay vigilant attention to developments relating to the creation and operation of advanced services affiliates. The requirements that ILECs and affiliates post information on their web pages will only be fully effective as a tool for fighting abuse if the Commission reviews these web pages to monitor ILEC-

affiliate transactions. The Commission must be proactive in other ways as well. It must allocate staff to follow events in the market, and it must give market participants – CLECs, ILECs and advanced services affiliates – frequent opportunities to communicate directly with the Commission.

IV. THIS COMMISSION MUST ENSURE PRICING EQUITY IN ORDER TO PROMOTE BROADBAND DEPLOYMENT

The NPRM focused on the possibility of regulatory relief for the ILECs as well as specific remedies that would strengthen CLECs' ability to obtain loops and collocation. Recent events, however, indicate that for purposes of promoting broadband deployment, the most crucial sections of the NPRM are those dealing with pricing of advanced services. Since comments were filed on the ILECs' petitions for relief under section 706, several ILECs (Bell Atlantic, BellSouth, GTE and Pacific Bell) have tariffed ADSL service. Not one of these tariffs reflects any of the loop and collocation costs necessary to provide xDSL service, and which the ILECs impose on xDSL CLECs. This has created a "price squeeze" under which ILECs' charges to competing CLECs for the unbundled network elements necessary to provide competitive DSL service are more than the full retail charge of the ILECs' service. NorthPoint thus proposes four remedies that will make such price squeezes easier to detect while simultaneously promoting the deployment of broadband services by giving ILECs an incentive to reduce the costs of loops and collocation necessary to provide xDSL service.

A. Incumbent LECs Providing Advanced Services on an Integrated Basis Should Impute the Costs of the Monopoly Inputs Necessary to Provide Such Service

Imputation is the most pressing issue currently facing the Commission. Unless ILECs that refuse to adopt a separate subsidiary arrangement are required to reflect the true costs of providing their ADSL service in their rates for that service, they will – and in fact already do – exert a price squeeze that makes entry by other carriers economically infeasible.

A price squeeze exists whenever a competitor that is equally efficient at providing the competitive portions of a service cannot, without losing money, meet the incumbent's retail price given the price(s) that it must pay to the incumbent for any bottleneck input(s) available only from the incumbent. A price squeeze can be the result of the markup over direct economic cost that the incumbent imposes for bottleneck inputs that both it and the competitor use or the incumbent's imposition of costs on the competitor that the incumbent does not bear at all. To avoid a price squeeze, the incumbent's retail price must equal or exceed the sum of the price that it charges to competitors for the bottleneck input(s) plus the total service long-run incremental cost of the competitively provided portions of the service.

Today, the ILECs proposed ADSL tariffs – which are being investigated by this Commission -- would exert just such a price squeeze. GTE, for instance, provides its ADSL service for as little as \$29 per month. By contrast, in California, CLECs must pay GTE almost \$19 for an unbundled digital loop necessary to compete, as well as an average of almost \$50,000 for collocation in each central office. Similarly, BellSouth is providing

ADSL service for as little as \$45 per month in Florida, even though it charges competing CLECs like NorthPoint \$41.50 per month for an unbundled digital loop. Thus, a CLEC's costs for loops and collocation alone exceed the ILEC's retail price for ADSL service, before the CLEC recovers costs of equipment and overhead. Obviously, facilities-based competition cannot exist where it costs CLECs more for a piece of an ILEC's DSL service than it costs retail customers for the entire service.

Accordingly, to ensure the ILEC reflects the costs of necessary inputs, this Commission must require the ILEC to "impute" the price(s) of the bottleneck input(s) into the price of its competing retail service. Ameritech agrees that an imputation requirement should apply to ILECs that do not establish separate data affiliates. Appendix at 3. In particular, the ILEC should be required to impute virtual collocation at the same rates it charges CLECs for comparable arrangements. So doing will benefit consumers by encouraging vigorous competition among all advanced services providers.

B. Incumbent LECs Should be Required to File Resale Tariffs Within Thirty Days or Before Originating Service

NorthPoint supports this Commission's tentative conclusion that advanced services such as ADSL fall within the class of resale services offered to retail customers and are thus subject to resale. Section 706 Order ¶ 65. A clear mandate to that effect is required, however, in order to ward off gamesmanship by the ILECs. NorthPoint notes, for instance, that the Minnesota Attorney General recently filed a complaint with the Minnesota PUC alleging that U S WEST had improperly failed to file a tariff for its ADSL service at wholesale prices. Pacific Bell also recently argued to the California Public Utility Commission that Pacific's ADSL service was an exchange access service not

subject to a wholesale discount. Pacific's argument was based on the fact that its ADSL service resembles private line service. The California PUC, citing this Commission's conclusion in the Local Interconnection Order, concluded that since private line services are generally offered to telecommunications carriers and not retail consumers, no resale discount is applicable. This Commission should nip these practices in the bud by making clear that those ILECs that offer advanced services to non-carrier customers on an integrated basis (i.e., not through a separate subsidiary) must file wholesale tariffs for those services at an appropriate discount within 30 days of the Commission's Order in this proceeding or before originating service. A clear mandate from this Commission would ensure that the ILECs meet the resale and unbundling obligations of the section 706 Order.

C. Incumbent LECs Should be Required to Accept Split-off Voice Traffic from CLECs at the Same Prices They Charge Themselves

Broadband deployment will also be slowed if the Commission does not require arrangements that would allow two different service providers to offer services over the same loop, with each provider utilizing different frequencies to transport voice or data over that loop. This is especially true with respect to price-sensitive residential customers. As this Commission noted in the NPRM, xDSL technology can be used to separate a single loop into a POTS channel and a data channel, and can carry both POTS and data traffic over the loop simultaneously. Currently, the ILECs are using this approach to offer both voice service and xDSL service over a single copper loop.⁹ CLECs, by contrast, are

⁹ Where an ILEC operating on an integrated basis provides both data and voice service over a single loop, the ILEC should be required to impute the entire cost of the loop. In the alternative, if the ILEC does not impute any loop costs, it should be required to sell comparable unbundled loops to CLECs at a price of \$0.

using a dedicated copper pair for their xDSL services, since the ILECs have indicated they will not accept split-off voice traffic from the CLECs. This is manifestly inefficient.

The Commission thus should make clear where CLECs use a single loop to provide both data and voice service, ILECs should be required to accept the split-off traffic from the CLEC. In particular, the ILEC should be required to allow the CLEC to tap onto loops at the MDF, where the ILEC would filter the voice traffic from the data traffic. The CLEC would then be able to use the loop both for its broadband service and for reselling the ILEC voice service.¹⁰

D. A Joint State-Federal Board Should be Convened

Finally, NorthPoint proposes that this Commission convene a joint state-federal advisory Board to investigate the issue of UNE pricing. Since true competition will not emerge until the prices of UNEs drop from their current inflated levels, such a Board would be well-positioned to share insights into current UNE pricing levels.

V. LIMITED INTERLATA RELIEF

The Commission seeks comment on limited interLATA relief for the purpose of furthering the provision of advanced services by the BOCs. As described in the Appendix, NorthPoint agrees that limited interLATA relief for advanced services is appropriate if the BOC can show that it: (1) provides advanced data services through a separate affiliate that satisfies the separation framework adopted by the Commission; (2) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements,

¹⁰ NorthPoint also agrees with the Commission's tentative conclusion that the Act's nondiscrimination requirement implies that any voice product that an incumbent LEC provides to its advanced services affiliate would have to be made available to CLECs on the same terms and conditions. For example, if the advanced services affiliate leases the loop and resells the incumbent's voice service, the competitive LEC must be allowed to do likewise.

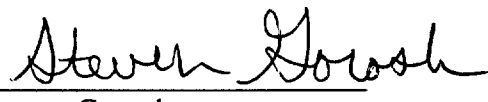
regarding collocation; and (3) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, relating to the availability of ADSL, HDSL, and ISDN compatible loops.

Upon a showing that these conditions have been met, the Commission should provide limited interLATA relief to permit the BOC: (1) to provide interLATA transport within a state for data services provided to customers with multiple locations in that state; (2) to access an ATM switch within the state; and (3) to provide transport from the ATM switch to the closest Network Access Point (NAP) outside the LATA in which the switch is located, regardless of whether that NAP is located within the state.

Conclusion

As set forth above, NorthPoint respectfully requests that the Commission affirm its proposed separate affiliate requirements and the proposed loop and collocation remedies. In addition, the Commission should require that ILECs that do not provide their advanced services through a separate subsidiary must impute the loop, collocation, and operations support systems costs they charge their competitors into their ADSL tariffs, and tariff the ADSL service for resale within thirty days. The Commission also should require that the ILECs accept split-off voice traffic from CLECs at the same prices they charge themselves, in order to make "one-loop" offerings possible. Finally, this Commission should convene a state-federal advisory board in order to reduce the costs of UNEs. Together, these steps will promote the widespread deployment of broadband alternatives, to the benefit of all Americans.

Respectfully submitted,

 /DVS

Steven Gorosh
Vice President and General Counsel
NorthPoint Communications, Inc.
222 Sutter Street, Suite 700
San Francisco, CA 94108
(415) 403-4003

Ruth Milkman
Daniel Segal
The Lawler Group
7316 Wisconsin Avenue, Suite 400
Bethesda, MD 20814
(301) 654-9737

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**JOINT STATEMENT OF PRINCIPLES APPLICABLE
IN A SEPARATE SUBSIDIARY ENVIRONMENT
BY AMERITECH AND NORTHPOINT**

In anticipation of the Commission's Section 706 NPRM, Ameritech and NorthPoint Communications initiated discussions regarding the principles that should drive Commission decisions in this proceeding. Both parties entered into these discussions with a desire to conduct an open and honest dialogue that transcends adversarial posturing with the sense that such a dialogue could add significantly to the record. We began with NorthPoint's July 29, 1998, *ex parte* filing at the FCC but expanded discussions to other issues as well.

As a result of this dialogue, Ameritech and NorthPoint found common ground with respect to most of the major issues in this proceeding. Set forth below is a statement of the principles on which the two companies agree. Both companies urge the Commission to adopt policies that reflect and implement these principles in its Section 706 order, to the extent it has authority to do so.

Most importantly, both companies agree that a separate subsidiary for the provision of advanced data services ameliorates many of the concerns that might otherwise exist with respect to the possibility of discrimination and cross-subsidization by an ILEC. Ameritech and NorthPoint accordingly urge the Commission to adopt policies that incent ILECs to provide data services through a separate subsidiary.¹

Both companies also agree as to the level of separation that is appropriate. Specifically, both companies agree that the separate subsidiary framework proposed in the Notice should generally be adopted, subject to one clarification and one modification described in Ameritech's comments.

Assuming that an ILEC adopts the Commission's separate subsidiary framework, the following principles should also apply. Additional requirements beyond those discussed below may be appropriate for ILECs that provide data services on an integrated basis.

¹ Although Ameritech questions whether, as a matter of law, an ILEC affiliate could be deemed a "successor or assign" of the ILEC or a "comparable carrier" under section 251(h) simply because it does not meet all of these separation requirements, Ameritech and NorthPoint agree that the Commission should incent ILECs to adopt a separate subsidiary framework.

Collocation Space Availability

All requests for collocation, including requests to reserve space for future use, should be handled on a first-come, first-served, nondiscriminatory basis.

Requests to reserve space for future use should be subject to appropriate, reasonable, and non-discriminatory anti-warehousing policies. Specifically, ILECs should accommodate such requests when space is available. However, if another entity seeks the reserved space for its immediate use, and alternative collocation space is not available, the party that had reserved such space for future use should be required to either take the space at that time or give it up to the new requestor. These principles should govern requests by ILEC affiliates and non-affiliates.

Among the options that should be explored when collocation space is not available are the removal of inactive equipment and conversion of administrative space. Both parties recognize that these options may or may not be appropriate, depending upon the circumstances, but agree they should be considered.

In the event a request for physical collocation is denied, the ILEC should permit CLEC personnel, subject to appropriate supervision and protection of confidential information, to inspect, at the ILEC's premises, copies of office floor plans with respect to the relevant space.

ILECs and CLECs should negotiate in good faith when space constraints prevent the ILEC from meeting a collocation request. Parties should attempt to negotiate a mutually acceptable solution before seeking regulatory intervention. The negotiation process, however, should never be used as an instrument of delay.

Collocation Intervals

CLECs should have the option of ordering collocation under tariff and, to this end, ILECs should file a tariff in each state in which they operate as an ILEC. CLECs that wish to negotiate collocation terms in an interconnection agreement should be able to do so.

ILECs may not discriminate between data affiliates and unaffiliated providers of data services with respect to intervals within which they provide collocation. ILEC compliance with this requirement should be gauged through performance measurements that show: average time to respond to a collocation request, average time to provide a collocation arrangement, and percent of due dates missed.

Charges for Collocation

Collocation charges should be based on forward looking long run incremental cost.

Charges for collocation should be assessed on a nondiscriminatory basis. ILEC subsidiaries should receive collocation at the same rates, terms, and conditions as an unaffiliated company. If an ILEC employs a separate subsidiary to provide advanced data systems, it is not necessary to employ an imputation test to address cross-subsidy concerns. An imputation requirement should, however, apply to ILECs that do not establish separate data affiliates.

Collocation providers should estimate the demand for collocation space and the average initial first-in cost should be recovered over time from multiple customers based on those demand estimates. There should not be "first in" penalties.

ILEC should permit CLECs to purchase their own equipment for virtual collocation, subject to an appropriate arrangement that provides the ILEC with the necessary administrative control over placement and access. Such arrangements should not prevent CLECs from giving equipment vendors a security interest in virtually collocated equipment, as necessary to obtain vendor financing.

Ameritech and NorthPoint agree that Ameritech's current practice of allowing the requesting carrier to negotiate directly with Ameritech approved installation contractors to determine both price and timing of installation of collocated equipment is an effective and efficient means of controlling costs.

Physical Collocation Alternatives

Parties should negotiate alternatives to traditional physical collocation arrangements where they are mutually beneficial. These alternatives include, without limitation, cageless physical collocation; collocation areas of less than 100 square feet; and virtual collocation.

Except for providing reimbursement for expenses, CLECs should not be charged for training ILEC service technicians.

To the extent, CLECs seek to use their own technicians to service virtually collocated equipment, ILECs should negotiate arrangements that permit CLECs to do so on an escorted basis.

Collocated Equipment

Carriers shall have the right to collocate equipment that complies with applicable industry approved safety and electrical interference standards. To the extent such equipment interconnects with other networks, it must also comply with applicable industry approved interoperability standards. ILECs should not refuse to collocate non-interconnected equipment for failure to comply with reliability standards.

An ILEC may not discriminate between its affiliate and non-affiliates in the enforcement of such standards; it must apply those standards equally to its affiliate and non-affiliates.

Access to Unbundled Loops

ILECs may not discriminate in favor of their affiliate in the rates, terms, or conditions on which they provide access to unbundled loops (including ADSL, HDSL, or ISDN loops).

ILECs should provide access to unbundled loops at remote terminals where technically feasible and space limitations permit. ILECs may not discriminate in the provision of such access in favor of their affiliate.

To the extent that appropriate unbundled loop facilities are not available and where the ILEC voluntarily undertakes to expand or modify its loop plant to make such loops available, it is appropriate that the requesting carrier, whether affiliated or not, bear the reasonable cost of such expansion or modification.

Interconnection agreements should prescribe reasonable intervals for provisioning of loops. The parties agree that for minimum volume orders of existing non-DS-1 loops, a standard interval of five days is reasonable where dispatch is not required. Reasonable intervals should be established based upon the type, quantity, and availability of facilities that have been requested.

An ILEC's affiliate and non-affiliated telecommunications carriers should have the same access, under the same terms, to the operations support systems (OSS), including pre-ordering (including, where available, loop qualification systems), ordering, provisioning, repair, and billing interfaces consistent with industry standards.

Spectrum Sharing

Spectrum management issues are highly complex and are thus best addressed through industry standards developed in industry fora. Industry standards should address, not only the ability of two or more carriers to share the same loop, but also the potential of one loop user to interfere with other users.

The Commission should not adopt specific rules regarding spectrum sharing until the standards bodies have completed their deliberations. This, of course, would not preclude a regulatory body from addressing specific activities that an individual carrier may undertake to impose a proprietary standard on other interconnected carriers, should that occur.

Limited InterLATA Relief

Ameritech and NorthPoint agree that a BOC should be given limited interLATA relief for advanced data services, as described below, if that BOC demonstrates that it: (1) provides advanced data services through a separate affiliate that satisfies the separation framework adopted by the Commission; (2) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, regarding collocation; and (3) complies with all state and federal rules, as well as the terms of applicable tariffs and interconnection agreements, relating to the availability of ADSL, HDSL, and ISDN compatible loops.

Upon a showing that these conditions have been met, the Commission should provide limited interLATA relief to permit the BOC: (1) to provide interLATA transport within a state for data services provided to customers with multiple locations in that state; (2) to access an ATM switch within the state; and (3) to provide transport from the ATM switch to the closest Network Access Point (NAP) outside the LATA in which the switch is located, regardless of whether that NAP is located within the state.

The Commission should establish a streamlined process (*e.g.* 60 days) to review BOC requests for limited LATA relief.